IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. Civil Second Appeal No.436 Of 2003.

With

S.B. Civil Revision Petition No.728/2003.

Nathu Lal Vs. Shri Kanthdutt

Date Of Order ::: 16.11.2006.

Hon'ble Mr. Narendra Kumar Jain J.

Mr. M.M. Ranjan, Counsel for defendant-appellant.
Mr. R.K. Goyal, Counsel for plaintiff-respondent.

By the Court :

Heard learned counsel for both the parties.

The above second appeal as well as the revision petition, both arise out of one suit for eviction, therefore, they are being disposed of by this common order.

The plaintiff-respondent filed a suit for eviction in the Lower Court on the ground of default in making the payment of rent as well as non-user of the

premises, which was decreed by the Lower Court Being aggrieved with the same, an appeal was preferred by the defendant.

The defendant contended only one submission before the First Appellate Court that the eviction decree has been passed in respect of that portion of the property also, which was not covered by the rent note, whereas plaintiff himself had contended that he will file a separate suit in respect of that portion of the property, which was not covered by the rent note. The First Appellate Court partly allowed the appeal of the defendant and set aside the judgment of the Lower Court so far it was relating to the that part of the property, which was not covered by the rent note and for which the plaintiff had mentioned that he will initiate separate proceedings for eviction or possession of the said property.

It is relevant to mention here that the defendant filed a review petition before the First Appellate Court, wherein he contended that he had taken other grounds in his memo of appeal, whereas in the judgment of the First Appellate Court, it has been mentioned that the defendant has taken only one ground

in respect of that property, which was not covered by the rent note, therefore, it may be clarified that all grounds were pressed before the First Appellate Court. The learned First Appellate Court rejected the review petition vide order dated 29.04.2003, wherein it is specifically mentioned that no other ground was pressed by the defendant before the first appellate court except the ground which has been mentioned in the judgment dated 18.09.2002. The present revision petition is directed against the said order dated 29.04.2003 rejecting review petition of the defendant-appellant.

Learned counsel for the appellant does not dispute that the defence of the appellant was struck of in the present case and the said order striking down the defence of the appellant was not challenged by him, whereas the same was appealable under Section 22 of the Rajasthan Premises (Control of Rent & Eviction) Act, 1950. His only contention is that the Lower Court or the first Appellate court did not record any finding in respect of default in making the payment of rent, therefore, the suit for eviction could not have been decreed on that ground. As mentioned above the

defendant himself did not challenge any other ground including the ground of default before the First Appellate Court and his only grievance was that the decree of eviction should not have been passed in respect of that portion of the property, which was not covered by the rent note. In these circumstances, I do not find any force in the contention of the learned counsel for the appellant.

Even otherwise no substantial questions of law are involved in this second appeal.

I do not find any illegality or perversity in the order dated 18.09.2002 as well as order dated 29.04.2003 rejecting review petition by the First Appellate Court.

Consequently, the second appeal as well as revision petition both are dismissed at the admission stage itself with no order as to costs.

(Narendra Kumar Jain) J.

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